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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 866 (WHP)

5 ROGER THOMAS CLARK,

6 Defendant.

7 -----x

Conference

8 March 22, 2019

9 12:05 p.m.

10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 BY: MICHAEL D. NEFF

18 Assistant United States Attorney

19 STEPHANIE M. CARVLIN

20 JACOB B. MITCHELL

Attorneys for Defendant

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(Case called)

THE DEPUTY CLERK: Appearances.

MR. NEFF: Good afternoon, your Honor. Michael Neff for the government, joined at counsel table by F.B.I. Special Agent Sam Shahrani.

MS. CARVLIN: Good afternoon, your Honor. Stephanie Carvlin for Roger Thomas Clark. Mr. Clark is to my right. Jacob Mitchell is to Mr. Clark's right. Good afternoon.

THE COURT: Good afternoon to all of you.

I note the presence of Mr. Clark at counsel table.

I have reviewed your submission, Ms. Carvlin, and that of your client.

From the government's perspective, Mr. Neff, where do we stand.

MR. NEFF: Your Honor, I don't believe there has been any additional discovery produced between the last time we were before the court about eight weeks ago and today.

Is this an appropriate time to inform the court as to our position on the defense request?

THE COURT: Yes. Before you do, though, I thought in January you said there were certain forum posts that the government was exploring and would be producing.

MR. NEFF: That is correct, your Honor. My apologies. With the exception of that.

THE COURT: Have they been --

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1 MR. NEFF: Yes, they were produced promptly after the
2 prior conference. Sorry. With that exception, there has not
3 been additional production.

4 THE COURT: And does the government anticipate any
5 additional production?

6 MR. NEFF: Your Honor, our investigation is ongoing.
7 As with any case, we will continue to investigate up to trial.
8 I am quite confident that the vast majority of everything has
9 been produced. But, of course, it is possible that, as we
10 continue to investigate, we will come across more, and if and
11 when we do, we will promptly produce it.

12 THE COURT: Now you could turn to Ms. Carvlin's
13 letter, if you would.

14 MR. NEFF: Thank you, Judge.

15 The bottom line point from our perspective, we take no
16 position on the defense request, though the government will be
17 ready for trial as currently scheduled, in September of this
18 year.

19 I do want to flesh out a point or two that may be
20 relevant as the court is considering whether to grant some type
21 of adjournment and, if so, to what extent.

22 There is no doubt that the discovery in this case is
23 voluminous. That is, I think, a word we have used before.
24 There is no question it is indeed voluminous. And there is
25 further no question that the defense is conducting a thorough,

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1 comprehensive review, will continue to conduct such a review,
2 and presumably should conduct such a review.

3 I do think it relevant to point out that not every
4 page of Rule 16 may be created equal. What I mean by that is,
5 the majority of the Rule 16 materials in this case concern the
6 existence of the Silk Road marketplace. The defense is and
7 will continue, it seems, to conduct a very thorough review of
8 those materials, as is appropriate. I think, although I am not
9 certain, as I am not privy to the defense trial strategy, I
10 think that the central question in this case, presuming that it
11 goes to trial, is likely to be not did this illegal marketplace
12 exist, but can the government prove Mr. Clark's involvement in
13 it? I am mindful that the defense has something of a playbook
14 as to how the government proved the existence of this
15 marketplace at a prior, lengthy, recent trial. And on the
16 topic of attribution, in other words, can the government prove
17 Mr. Clark's involvement, I would also note we have made
18 considerable efforts to try to point the defense to attribution
19 evidence, including, as mentioned, I guess, about nine months
20 ago, but just to reiterate, at the initial conference, we
21 brought a binder which might be considered some of the greatest
22 hits of attribution evidence. That is not something we
23 typically do, but it is something we did here because we want
24 to point the defense to pieces of evidence that we believe
25 establish beyond a reasonable doubt that Mr. Clark was

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1 personally and heavily involved in the Silk Road marketplace.

2 I mention this because I think it may be relevant as
3 the court is considering whether and to what extent to grant an
4 adjournment in the context of what is no doubt a very
5 considerable volume of discovery when viewed in total but,
6 again, I think not every page is created equally.

7 THE COURT: Thank you, Mr. Neff.

8 Ms. Carvlin.

9 MS. CARVLIN: Yes, your Honor.

10 In terms of what Mr. Neff just said, we have not had
11 any issue with the government in terms of working with the
12 government to get the discovery to Mr. Clark as quickly as
13 possible, to figure out ways to make it more accessible.
14 That's not the issue here. I could go through, and I have kept
15 a very careful timeline of everything I have done in this case,
16 every document I have received, every document I have sent to
17 Mr. Clark, how long it has taken me, how long it has taken the
18 government.

19 The point here that we are asserting is not blame
20 toward the government, but that it is a unique situation. I
21 think that's an overused word, but this is unique. It is a
22 massive amount of discovery. The discovery is a live shot,
23 essentially -- the servers are a live shot, essentially, of the
24 conspiracy as it unfolds. I pointed out in my letter and
25 Mr. Clark has pointed out in his letter the many reasons that

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1 we need to review this. I feel an obligation to at least make
2 an effort to review everything, not just the 30 or so pages the
3 government provided in the binder months ago, but the probably
4 hundreds of millions of documents.

5 We have gotten better over time in figuring out how to
6 do that. We have sought resources from the court, which the
7 court has quickly granted and that we have made use of. We
8 have used the Office of the Defender Services to make this more
9 accessible. But it is going to take time. And I think that
10 time is necessary in this case.

11 I think there is very little countervailing reason to
12 move this case along more quickly than Mr. Clark has requested.
13 As I said in my letter, it is not a situation where this type
14 of evidence is going to disappear or degrade or deteriorate.
15 It is the Silk Road servers. It is the postings on the web
16 site. It is the chat logs.

17 I'm sure the government has cooperating witnesses, and
18 that will, you know, delay their sentencing, but that's
19 inherent in cooperation.

20 So what I would say, your Honor, is there are very
21 compelling reasons to grant us the time that we request to
22 review the material, and although the public of course has a
23 right to a speedy trial as well as Mr. Clark, I think his
24 interest in this case, for all the reasons he outlines in his
25 very detailed letter as well as the highlights of my letter,

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1 that his interests outweigh the interest of the public in this
2 case both in terms of his due process right to review the
3 material, his right to confront the witnesses, his right to
4 effective assistance of counsel.

5 I think your Honor can see by the letter that he wrote
6 to your Honor that he has made good use of his time. His
7 arguments are, I would say, very well crafted, pointed. He is
8 reviewing the material. He can discuss it, does discuss it.
9 It is not seeking delay for the purpose of delay. It is
10 seeking delay to defend himself on charges that could land him
11 in prison for the rest of his life. So I would ask you to
12 grant the schedule that he requested.

13 THE COURT: But the notion that any human being is
14 going to review 500 million pages, which is, what, 8 1/2
15 terabytes, translates to, it's not realistic, and certainly
16 there is a lot to be said for Mr. Neff's statement that not
17 every page of Rule 16 material is equal. Even with the dates
18 that Mr. Clark is proposing, it is not humanly possible for one
19 person or even a team of people to review 500 million pages.
20 So I really think that that is, in a sense, a red herring.

21 I do think that Mr. Clark is working very diligently
22 going through material and I found his letter to be very
23 thoughtful, demonstrating to me that he is fully engaged in his
24 own defense and in assisting his lawyer in the case. And so I
25 am prepared to grant an adjournment in this case, given the

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1 defendant's earnest position and the work he is doing now that
2 it seems that all the hurdles have been taken down at MCC.

3 I think a couple of things:

4 First, a conference like this and your submission in
5 advance is very helpful to me in bringing the parties together
6 and keeping this case moving. It is clear to me now that the
7 case cannot be tried in September of this year.

8 What I would like to do is put this matter down for a
9 conference in about four months or so for the purpose of
10 discussing motions that the defendant may see on the horizon at
11 that time and with a view toward getting this case ready so
12 that it can be tried somewhat earlier in 2020 than the
13 defendant has proposed. That just seems to me to be too long.
14 But it seems to me that if we keep moving and if the defendant
15 continues to have access to the materials that he appears -- at
16 the rate and frequency that he appears to have now, I think
17 that we should be able to get the case ready and try to try the
18 case which, if I'm recalling correctly, the government says
19 will take approximately three weeks?

20 MR. NEFF: I think that's about right, your Honor,
21 obviously subject to the length of any defense case.

22 MS. CARVLIN: I would just mention, your Honor, that I
23 do anticipate at this point putting on a defense case that
24 could consume a week.

25 THE COURT: All right. I think it is important for us

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1 to have a trial date in mind and to have a fixed trial date.
2 So for all the reasons set forth in the defendant's letter, I
3 am willing to adjourn the trial to May 4. Now, I pick that
4 date because it is one part of the calendar where there would
5 be clear sailing for a jury trial to be fully engaged. It is
6 beyond the Easter/Passover holidays, and I think it is a good
7 place for us to be.

8 What I would like to do is set this matter down for a
9 further conference in July. I will put it down for July 18 at
10 12 noon. I would like to receive a letter, once again,
11 reporting on the progress of the defense; and if the government
12 has any update, I welcome that as well. Perhaps submit any
13 such letters by July 15.

14 As I say, the purpose on July 18 would be, one, first,
15 to hear about the progress that's been made, where the defense
16 feels they are on their continuum, and whether they are
17 developing a sense of what motions they want to make, without
18 committing, because I understand that that may take more time,
19 but if there are some motions that the defense feels at that
20 point are ripening and could be made some time shortly after
21 that, we can tee those up and start to address issues pretrial
22 in the case.

23 MS. CARVLIN: Yes, your Honor.

24 THE COURT: Where did I leave it, Mr. Neff, with
25 respect to the exclusion of time in this case?

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1 MR. NEFF: Your Honor, time is excluded through today,
2 but the government would seek to exclude time between today and
3 July 18 of this year so that the defense can continue to review
4 discovery, determine if they may make any noncommittal motions,
5 and so that, if appropriate, the parties can engage in possible
6 negotiations.

7 THE COURT: All right. Since this continuance is at
8 the behest of the defense counsel and the defendant and in view
9 of the arguments and information that the defendant has
10 provided to the court, I prospectively exclude the time from
11 today until July 18, 2019, from Speedy Trial Act calculations.
12 I certainly find that this continuance serves to ensure the
13 effective assistance of counsel and affords the defendant
14 himself the opportunity to continue his review of materials
15 produced by the government as he develops arguments and
16 strategies for his defense, and I find that the interests of
17 justice are served in this case and that such a continuance
18 outweighs the best interest of the public in a speedy trial
19 pursuant to 18 U.S.C. Section 3161.

20 Is there anything further at this time.

21 MR. NEFF: Not from the government, your Honor. Thank
22 you.

23 MS. CARVLIN: No, your Honor. Thank you.

24 THE COURT: All right. Thank you all for coming in.
25 I will see you in a few months.

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